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| APPLICATION NO.   | FILING DATE | FIRST NAMED INVENTOR | ATTORNEY DOCKET NO.           | CONFIRMATION NO.       |
|---|-------------|----------------------|-------------------------------|------------------------|
| 10/574,505  | 02/27/2007  | Ichiro Inoue         | 1035-626                      | 2374                   |
| 7590<br>Nixon & Vanderhye<br>901 North Glebe Road<br>11th Floor<br>Arlington, VA 22203-1808 |             |                      | EXAMINER<br>MERLIN, JESSICA M |                        |
|   |             |                      | ART UNIT<br>2871              | PAPER NUMBER           |
|   |             |                      | MAIL DATE<br>10/19/2011       | DELIVERY MODE<br>PAPER |

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

**Advisory Action**  
**Before the Filing of an Appeal Brief**

**Application No.**

10/574,505

**Applicant(s)**

INOUE ET AL.

**Examiner**

JESSICA M. MERLIN

**Art Unit**

2871

**—The MAILING DATE of this communication appears on the cover sheet with the correspondence address —**

THE REPLY FILED 11 October 2011 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☒ The period for reply expires 3 months from the mailing date of the final rejection.  
b) ☐ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.  
MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☒ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☒ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: See Continuation Sheet (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☒ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.

The status of the claim(s) is (or will be) as follows:

Claim(s) allowed: \_\_\_\_\_

Claim(s) objected to: \_\_\_\_\_

Claim(s) rejected: 1-23, 25-28 and 31

Claim(s) withdrawn from consideration: \_\_\_\_\_

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because: See Continuation Sheet.  
12. ☐ Note the attached Information Disclosure Statement(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_  
13. ☐ Other: \_\_\_\_\_

/JESSICA M MERLIN/  
Primary Examiner, Art Unit 2871

Continuation of 3. NOTE:

The proposed amendments to the claims would require further search and/or consideration to determine the patentability of the claims.

Continuation of 11. does NOT place the application in condition for allowance because:

In regard to independent claim 1, applicant's arguments, on pages 8-11 of the Remarks, that the previously applied prior art fails to disclose all of the limitations of claim 1, as newly amended, have been fully considered and are appreciated. However, the examiner respectfully disagrees.

First, applicant argues that Yamaguchi et al. fails to disclose the newly added limitation, "wherein the liquid crystal medium has a negative dielectric anisotropy, and wherein the display element comprises first and second polarizers in crossed Nichols orientation." However, as cited above, Yamaguchi et al. discloses "wherein the display element comprises first and second polarizers in crossed Nichols orientation," but is silent as to "wherein the liquid crystal medium has a negative dielectric anisotropy." Stephenson, III et al. discloses the liquid crystal medium has a negative dielectric anisotropy (see e.g. paragraph [0053] where it is noted that liquid crystal with negative dielectric anisotropy may be used). The motivation for combining Yamaguchi with Stephenson, III et al., is to provide an art recognized liquid crystal material that is suitable for the liquid crystal display device (see e.g. paragraph [0053] of Stephenson III et al.).

Second, applicant argues that Yamaguchi et al. does not disclose the technical idea of multiplying  $\Delta n$  by  $|\Delta \epsilon|$ . However, Yamaguchi et al. does disclose  $\Delta n \geq 0.2$  and  $\Delta \epsilon \geq 15$ , (see e.g. Column 5, lines 29-35), which overlaps applicant's claimed range for  $\Delta n \cdot |\Delta \epsilon| \geq 3$ . It is noted that in the case where the claimed ranges "overlap or lie inside ranges disclosed by the prior art" a prima facie case of obviousness exists (see e.g. MPEP 2144.05). Therefore, the device of Yamaguchi et al. meets the cited limitation.

Finally, applicant argues that the negative dielectric anisotropic material of Stephenson, III et al., may not be combined with Yamaguchi. However, the examiner respectfully disagrees. In response to applicant's argument that Yamaguchi and Stephenson, III et al. may not be combined, the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference; nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art. See *In re Keller*, 642 F.2d 413, 208 USPQ 871 (CCPA 1981). Namely, one of ordinary skill in the art would recognize the use of a negative dielectric anisotropic liquid crystal display as an art recognized equivalent, as it is well known in the art that positive or negative dielectric anisotropic liquid crystals may be used within display devices.